

IOWA SOLID WASTE PROGRAM ENVIRONMENTAL COVENANT

DRAFT 5 June 11, 2018

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This environmental covenant is established pursuant to Iowa Code (IC) chapter 455I entitled Uniform Environmental Covenants Act.

[INSERT name(s) of fee title owners of affected property], hereafter "grantor(s)", *[INSERT name(s) of all holder(s)]*, hereafter "holder(s)," and the Iowa Department of Natural Resources (DNR) in its capacity as an agency of Iowa state government enter into this environmental covenant for the purpose of subjecting the affected property described below to certain activity and use limitations in accordance with the terms and conditions as specified and the authorities granted the DNR in Iowa Code (IC) chapter 455I, § 455B.103(7), and DNR rules in chapter 567 Iowa Administrative Code (IAC) 113.

1. **Affected Property.** The grantor(s) is/are the fee title owner(s) of the property located at *[INSERT address]*. The affected property is legally described as: *[INSERT the legal description of the affected property from the property deed]*.

Hereinafter, the affected property will be referred to as "the property."

2. **Risk Management and Institutional Controls.**

In accordance with Chapter 455B of the State Iowa Code, municipal solid wastes were permitted to be disposed on the affected property by the DNR under solid waste disposal project permit *[INSERT permit number]* issued to *[INSERT permit holder]*.

The permit, investigations and reports are available for review in the DNR Solid Waste files under permit *[INSERT permit number]*.

The presence of buried municipal solid wastes on the site-property may present a risk to the public health and the environment if certain activities occur on the property. As such, the Director, pursuant to his authority under IC § 455B.103(7), has determined that an environmental covenant is necessary to manage the risk of future exposure by limiting specified activities at-on the property and establishing affirmative obligations.

[INSERT the following alternative paragraph if the contamination source is not the property.]
In response to a release of *[INSERT contaminant]* on an adjacent property (the source site) located at *[INSERT address of source site]*, *[INSERT name of the party requesting that grantor enter into this covenant]* has requested that the grantor execute this environmental covenant in order to satisfy the regulatory requirements applicable to the source site under 567 IAC 113. This environmental covenant is an institutional control which will allow the source site to obtain the *[No Further Action Classification or low-risk classification]* for the entire site or for certain exposure pathways.

Commented [BD1]: (Comment 1) Note: All or a portion of the property may be subject to the Covenant, so the specific boundary should be provided. Will a partial property covenant require a site survey to obtain legal description?

3. **Reopening.** The signatories acknowledge that in the event that the activity and use limitations provided ~~below in the environmental covenant~~ fail to serve their intended purpose—including the prevention of exposure to contamination—~~could result in the DNR could elect to reopening~~ its review and regulatory oversight of the contaminant condition on the property as provided under the terms of this covenant, IC chapter 455I, and applicable DNR administrative rules.

4. **Identity of Grantor(s) and Holder(s).**

GRANTOR(S): *[INSERT name of each fee title holder]*

HOLDERS: *[INSERT each person signing the covenant as a holder and describe their relationship to the property. A grantor can be a holder as well. Other persons may include contract buyers, lessees, mortgage holders, municipalities, owners of the source site, and other interested parties.]*

AGENCY: Iowa Department of Natural Resources

5. **Representations and Warranties.** The grantor(s) warrants to the other signatories to this covenant the following:

- a. The grantor[s] is/are the sole fee title owner[s] of the property;
- b. The grantor[s] holds sufficient fee title to the property to grant the rights and interests described in this covenant free of any conflicting legal and equitable claims;
- c. The grantor[s] has/have identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders and lessees, and secured their consent either by signatures on this covenant or by a separate subordination and consent agreement attached as Exhibit *[INSERT Exhibit]*. *[Consult DNR guidance to assure that all contract buyers, mortgagees, lessees and other consensual lienholders either sign this instrument or sign a separate DNR approved subordination and consent agreement.]*

6. **Running with the Land.** This environmental covenant is perpetual ~~and runs~~ with the land title as provided in IC § 455I.9 until modified or terminated. The terms of this environmental covenant are binding on the grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "transferee," as used in this environmental covenant, shall mean any future owner of any interest in the property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders and/or lessees.

7. **Activity and Use Limitations and Terms.** The property is subject to the following activity and use limitations:

- a. Except for excavations less than 2 feet deep or emergency and non-emergency repairs of existing structures including landfill caps, landfill gas collection systems and leachate management systems, all construction activities taking place on the property shown on Exhibit A – Plat Map must be approved by the DNR.
- b. No deposited municipal waste shall be excavated, disrupted, or removed from the site without first providing written notice to the DNR.
- c. Construction of drinking water wells within the boundaries of the property shall require approval by the DNR. “Drinking water wells” are defined as any groundwater wells used as a source of drinking water by humans and groundwater wells used primarily for the production of food or medicine for human consumption in facilities characterized with the standard industrial codes group 283 for drugs and 20 for foods.
- d. Construction of residences within the boundaries of the property must be approved by the DNR.

[In addition to general restrictions above, INSERT and describe specific restrictions and applicable to the property. These may be imposed by the DNR or developed in negotiations between the DNR and the grantor.]

- a. *[INSERT restrictions and use limitations and terms due to continued management of explosive gas].*

Examples of restrictions due to the presence of explosive gas, use limitations and terms are 1) placement of enclosed structures on the property that may expose humans to explosive gas levels without vapor intrusion control, 2) devices or practices that may provide a source of ignition (such as electrical devices or controlled vegetation burns), and 3) continued operation of explosive gas management control.

- b. *[INSERT restrictions and use limitations and terms due to continued management of leachate].*

For example: 1) the owner may be required to continue collection, management and disposal of leachate, and 2) the owner is required to control any leachate seeps.

- c. *[INSERT restrictions and use limitations and terms to site access].*

Certain areas of site may require and maintain additional security such as fencing around leachate lagoons or gas flaring equipment.

d. *[INSERT restriction and use limitations and terms to land use].*

Examples are: prohibitions to large animal grazing, row-crop agriculture, and development and placement of structures. The cap must be maintained in its original condition.

e. *[INSERT requirements and use limitations and terms for any continued groundwater monitoring, site inspections, documentation, and conditions that necessitate DNR notification].*

[INSERT any discretionary provisions applicable to designated signatories, future fee title owners, contract buyers, lessees and other designated transferees of interests in the property. This may include provisions to establish affirmative obligations to notify the DNR regarding changes in use, building permits, etc.]

8. Notice of Non-Compliance. Any property owner or subsequent transferee of an interest in the property shall notify the DNR as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph seven (7) if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.

9. Notice to Lessees. Grantor, any holder with a property interest sufficient to grant a lease of the property, and any subsequent transferee shall incorporate the activity and use limitations of this covenant either in full or by reference to this instrument in any lease, license, or other instrument granting a right to possession of the property.

10. Access to Property. Reasonable access to the property is granted to the DNR or any authorized representative of the DNR, public or private, for the purpose of implementation, monitoring and enforcement of the terms of this environmental covenant. The DNR, its authorized representatives or other persons entitled to access shall provide the current owner of the property with reasonable notice, an explanation of the reasons for entry and the scope of onsite activities prior to access. Right of access includes, but is not limited to, the following activities:

- a. repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures,
- b. fencing and other technological controls,
- c. groundwater sampling and monitoring,
- d. additional drilling,
- e. construction of soil boring and/or groundwater monitoring wells, and,
- f. other activities authorized or otherwise directed by the DNR.

Access is also granted to *[INSERT name specific persons who are granted access rights and the rationale for allowing access].*

11. Groundwater Hazard Statement Notice. IC § 558.69 requires submission of a groundwater hazard statement and disclosure if “hazardous waste” exists on the property as defined in IC § 455B.411(3) or if the DNR determines that solid waste exists on the property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with DNR rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under IC § 558.69 shall make reference to this environmental covenant in substantially the following form—filling in the blanks with the relevant and applicable details:

THE INTEREST CONVEYED IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED *(date)*, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE *(county name)* COUNTY RECORDER ON *(date)* IN *(document, book and page, or parcel number)*.

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: *[INSERT the activity and use restrictions from section seven (7) here.]*

12. Modification and Termination. Modification or termination of the terms of this covenant shall comply with the standards in IC chapter 455I and applicable DNR administrative rules. The terms of this environmental covenant may be modified or terminated by written consent of the Director of the DNR, the then current fee simple title owner and all original signatories (unless exempted under the provisions of IC § 455I.10(1)“c” in accordance with and subject to the provisions of IC § 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this environmental covenant shall be in accordance with IC § 455I.9 and such additional terms as specified in this covenant.

13. Enforcement. The terms of this environmental covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with IC § 455I.11. *[DISCRETIONARY PARAGRAPH – Additionally, the signatories to this covenant authorize the following person(s) the right to enforce the terms of this covenant as provided in IC § 455I.11(1)“c”: [INSERT name of any additional parties with enforcement power.]*

14. Severability. If any provision of this environmental covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

16. Recordation. Within thirty (30) days after DNR approval of this environmental covenant, the grantor[s] shall record the environmental covenant in the same manner as a deed to the property with the *[INSERT name]* County Recorder's Office.

17. Effective Date. The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been properly recorded with the *[INSERT name]* County Recorder's Office.

18. Notice. Unless otherwise notified in writing by the DNR, any document or communication required by this environmental covenant shall be submitted to:

Iowa Department of Natural Resources
Solid Waste Section Supervisor
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319

19. Subordination and Consent. By signing this environmental covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the property. The following persons have expressly consented and subordinated interests:

[INSERT: Identify persons and entities that are consenting and subordinating their interests such as mortgagees and other consensual lienholders, lessees, etc. Identify the nature of the subordinated interest. If no subordinated interest, enter "None."]

20. [DISCRETIONARY PARAGRAPH]: Notice of Change in Ownership. Grantor and holder with sufficient property interest to convey a possessory interest in the property and any subsequent transferee with sufficient interest shall reference and incorporate the terms of this agreement into any subsequent instrument which conveys a possessory interest in the property.

ACKNOWLEDGMENTS

GRANTORS

[INSERT signature blocks and appropriate acknowledgements for all grantors. Each signature must be separately notarized.]

HOLDERS:

[INSERT signature blocks and appropriate acknowledgements for all holders. Each signature must be separately notarized.]

AGENCY:

_____ Signed this ____ day of _____, 20__.

Bruce Trautman
Acting Director, Iowa Department of Natural Resources

State of _____)
County of _____) ss.

On this ____ day of _____, 20__, before me personally appeared

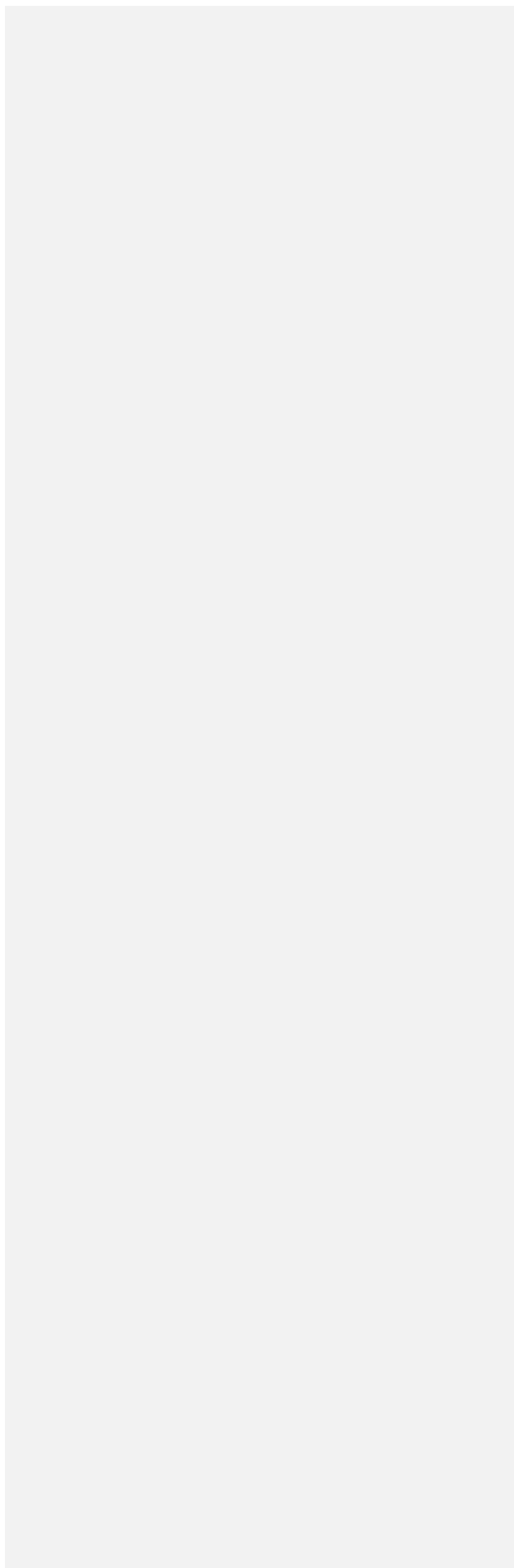
_____, known to me to be the Acting Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

_____,
Notary Public for State of Iowa

SUBORDINATED INTERESTS:

[INSERT signature blocks and appropriate acknowledgements for all subordinated interests – If none then strike this heading and section.]

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**Exhibit A
Plat Map**

Provide map that exhibits the affected property and any restricted sub-areas as needed.

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